

TOWN OF BENNETT, COLORADO  
BOARD OF TRUSTEES  
Regular Meeting  
January 25, 2022

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1. CALL TO ORDER

The Board of Trustees of the Town of Bennett met in regular session on Tuesday, January 25, 2022 via hybrid meeting. Mayor Royce D. Pindell called the meeting to order at 7:00 p.m. The following persons were present upon the call of the roll:

Mayor: Royce D. Pindell

Trustees Present: Kevin Barden  
Darvin Harrell  
Whitney Oakley  
Denice Smith  
Donna Sus  
Larry Vittum

Staff Present: Trish Stiles, *Town Administrator*  
Rachel Summers, *Deputy Town Administrator*  
Taeler Houlberg, *Administrative Services Director*  
Alison Belcher, *Communications and IT Director*  
Steve Hebert, *Planning and Economic Development Manager*  
Daymon Johnson, *Capital Projects Director*  
Sara Aragon, *Community Development Manager*  
Dan Giroux, *Town Engineer*  
Mike Heugh, *Town Traffic Engineer*  
Steve King, *Special Projects Coordinator*  
Melinda Culley, *Town Attorney*  
Christina Hart, *Town Clerk*

Public Present: Kathy Smiley, Andrew Thornton, Corissa Thornton, Ernestine Trujillo,  
Larry Gayeski, Chad August Shirley Reynolds, Michelle Gayeski, Bob Frachetti,  
John Vitella

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Royce D. Pindell.

3. APPROVAL OF AGENDA

MAYOR PRO TEM HARRELL MOVED, TRUSTEE VITTUM SECONDED to approve the agenda as presented. The voting was as follows:

YES: Harrell, Oakley, Pindell, Smith, Sus, Vittum, Barden

NO: None

Mayor Royce D. Pindell declared the motion carried by unanimous vote.

#### 4. CONSENT AGENDA

MAYOR PRO TEM HARRELL MOVED, TRUSTEE VITTUM SECONDED to approve the consent agenda as presented.

YES: Oakley, Pindell, Smith, Sus, Vittum, Barden, Harrell

NO: None

Mayor Royce D. Pindell declared the motion carried by unanimous vote.

A. **Action:** Approval of January 11, 2022 Regular Meeting Minutes

#### PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

There were no public comments presented.

#### 5. REGULAR BUSINESS

##### A. Public Hearing

##### 1. Case No. 21.33 Ziggi's Coffee Bennett Final Development Plan

##### Resolution No. 899-22 – A Resolution Approving the Ziggi's Coffee Final Development Plan

Mayor Royce D. Pindell called the matter of Case 21.33 Ziggi's Coffee Final Development Plan to order. The public hearing was opened at 7:05 p.m.

Christina Hart, Town Clerk, stated that in accordance with Colorado State Statute, notice of the public hearing was properly posted and published in the Eastern Colorado News on January 7, 2022. Legal #2557.

Steve Hebert, Planning and Economic Development Manager, reported to the Board of Trustees Case No. 21.33 is a proposed final development plan (FDP) for a 624 square-foot Ziggi's Coffee Drive-thru kiosk building on Lot 8, Block 1 of the Bennett Crossing Filing 1 subdivision. The 0.78-acre parcel is located at the northeast corner of Marketplace Drive and Private Drive A, immediately south of the new Comfort Inn & Suites. The subject property lies within the Planning Area - Business Commercial subarea zone district in Bennett Crossing.

The site plan has a shared access with Comfort Inn & Suites and a drive-thru circling clockwise around the kiosk building. There is no indoor seating; but, there will be a patio with trellis on the southwest side of the building for outdoor seating. The plan shows 16 parking spaces, a large landscaped area in the middle of the site, with a future play area.

The proposed landscape plan includes a collection of shade trees; ornamental trees; deciduous and evergreen shrubs; ornamental grasses and rock mulch. The plan has been designed to focus on water conservation while providing aesthetic enhancements. See the

packet for other sheets and details. Staff has recommended the relocation of a couple of trees to enhance visibility of the kiosk building.

Access is via Private Drive A on the west side of the property through a shared driveway with Comfort Inn & Suites. Sidewalks on the south and west side of the property provide pedestrian access. The plan shows 15 parking spaces, which exceeds the Town's minimum requirement of 10 spaces for a business of this size.

Water service will be provided by the Town of Bennett. Sanitary Sewer Sanitary sewer service will be provided by the Town of Bennett. Stormwater Management Stormwater will be collected and conveyed as part of the Bennett Crossing stormwater system. Access and Traffic Access is via Private Drive A on the west side of the property. Fire and Rescue Bennett-Watkins Fire Rescue will provide service. The applicant shall meet directly with BWFR to review specific site and building plans to assure conformance with International Fire Code standards. Gas, Electricity and Telecommunications Natural gas will be provided by Colorado Natural Gas, electricity by CORE Electric Cooperative and telecommunications by Eastern Slope Technologies (ESRTA).

The proposed restaurant is consistent with the Guiding Principles, Vision Statement and Goals of the 2021 Comprehensive Plan. In particular, it is consistent with the principle of promoting a mix of land uses and enhancing the Town's employment base.

Notice of the January 25, 2022 Board of Trustees hearing was published in the Eastern Colorado News, posted on the subject property and sent to all property owners within 300 feet of the property. No comments, other than those from the referral agencies, have been received to date.

Applicants Andrew and Corissa Thornton expressed their excitement to the Trustees for the opportunity to bring their business to the Town.

There was no public commented presented.

The public hearing was closed at 7:25 p.m.

TRUSTEE VITNUM MOVED, MAYOR PRO TEM HARRELL SECONDED to approve Resolution No. 899-22 – A resolution approving the Ziggi's Coffee Final Development Plan subject to the following conditions:

1. The applicant shall confer with the Bennett Fire Protection District to ensure the proposed development conforms to adopted (IFC) fire code standards and design expectations of both the Town of Bennet and the District.
2. Before recording the FDP, the applicant shall make minor modifications directed by Town Staff, the Town Attorney, and the Town Engineer.

The voting was as follows:

YES: Pindell, Smith, Sus, Vitnum, Barden, Harrell, Oakley

NO: None

Mayor Royce D. Pindell declared the motion passed unanimously.

2. Amending Chapter 16 of the Bennet Municipal Code Concerning Fair Contributions for Public School Sites

Ordinance No. 735-22 – An Ordinance Amending Chapter 16 of the Bennett Municipal Code Concerning Fair Contributions for Public School Sites

Mayor Royce D. Pindell called the matter of proposed amendments to Chapter 16 of the Bennett Municipal Code to order. The public hearing was opened at 7:35 p.m.

Christina Hart, Town Clerk, stated that in accordance with Colorado State Statute, notice of the public hearing was properly posted and published in the Eastern Colorado News on January 7, 2022. Legal #2556.

Steve Hebert, Planning and Economic Development Manager reported to the Board of Trustees, the attached ordinance implements the provisions of the Intergovernmental Agreement Concerning Land Dedications or Payments in Lieu for School Purposes (the "IGA"), which was recently approved by the Board of Trustees. Specifically, this ordinance:

- Amends and updates the requirements for land dedication for public school sites or payments in lieu of land dedication ("fair contributions for public school sites").
- States that the amount of amount land or payment in lieu required shall be determined in accordance with the IGA. This allows the Board and School District to make changes to the methodology for determining fair contribution for public school sites in the future without having to amend the Town Code again.
- Exempts certain properties/uses from having to comply with the fair contributions for public school sites requirements, including:
  - o Age restricted housing
  - o Limited term stay housing
  - o Long term assisted living facilities
  - o Alteration/replacement/expansion of a legally existing building that does not increase the number of dwelling units
- Sets forth the requirements for land dedication, including requiring the developer to provide a site that has direct access to an improved street, utilities stubbed to the site, and overlot grading.
- Repeals and reenacts Section 16-5-510 of the Town Code to create a separate section for the Town's public land dedication requirements. This just moves those requirements into their own section (separate from the school dedication requirements), but doesn't make any other changes to the public land dedication requirements.

There were no public comments presented.

The public hearing was closed at 7:47 p.m.

TRUSTEE SMITH MOVED, TRUSTEE SUS SECONDED to approve Ordinance No. 735-22 – An ordinance amending Chapter 16 of the Bennett Municipal Code concerning fair contributions for public school sites. The voting was as follows:

YES: Smith, Sus, Vittum, Barden, Harrell, Oakley, Pindell  
NO: None

Mayor Royce D. Pindell declared the motion passed unanimously.

3. **Bennett Lodging, Ltd. Third Amendment to Public Improvements Reimbursement and Tax Rebate Agreement**

**Ordinance No. 734-22 – An Ordinance Approving a Third Amendment to the Public Improvements Reimbursement and Tax Rebate Agreement**

Rachel Summers, Deputy Town Administrator, reported to the Board of Trustees, the Public Improvements Reimbursement and Tax Rebate Agreement between the Town of Bennett and Bennett Lodging, Ltd via Ordinance No. 693-19 on January 29, 2019. Under the agreement, the Town agreed to reimburse the Developer a portion of the sales and lodging tax as well as property and use tax collected on the property in exchange for the Developer's construction and completion of certain public improvements related to a Comfort Inn & Suites hotel. The original agreement stated that if the Developer failed to obtain a certificate of occupancy for the hotel on or before December 31, 2020, then the agreement would terminate, and the Developer would not receive the sale and lodging tax reimbursement payments. The Reimbursement Agreement also included a ten-year term from the First Accrual Date, which is defined as the last day of the first month in which the Hotel receives a "Certificate of Occupancy".

The Board approved the First Amendment to the Reimbursement Agreement dated September 22, 2020, providing a termination date if the Developer fails to obtain a certificate of occupancy for the Hotel on or before June 30, 2021. Additionally, the Board approved the Second Amendment to the Reimbursement Agreement dated May 11, 2021, providing that if the Developer fails to obtain a certificate of occupancy for the Hotel on or before December 31, 2021, then the Reimbursement Agreement shall terminate, and no payments shall be due or paid by the Town to Developer.

Staff received an email dated December 10, 2021, from the hotel developer, Bruce Rahmani, which identified the Developers' eagerness to complete construction but continued to face unexpected material, labor, and plan updates. His request is for a six-month extension, understanding that he has a financial impact each day he is not open.

Staff recommends that the Agreement be amended again to remove the December 31, 2021, deadline for obtaining a certificate of occupancy related to the sales and lodging tax. Further, we recommend that the Agreement's termination date be changed to 10 years from the date the Third Amendment is executed. Therefore, if the Third Amendment is approved, the clock for reimbursing sales and lodging tax begins now. Additionally, amending section 4.01 Town Property Tax Rebate to terminate and no property tax rebates shall be due or paid to the Developer if the Developer fails to obtain a certificate of occupancy for the Hotel on or prior to June 30, 2022. As well as amending Section 4.02 Construction Use Tax Rebate to terminate and no construction use tax rebates shall be due or paid to the Developer if the Developers fails to obtain a certificate of occupancy for the Hotel on or prior to June 30, 2022.

TRUSTEE SUS MOVED, MAYOR PRO TEM HARRELL SECONDED to approve Ordinance No. 734-22 – An ordinance approving a third amendment to the Public Improvements Reimbursement and Tax Rebate Agreement with Bennett Lodging, Ltd. The voting was as follows:

YES: Sus, Vittum, Harrell, Oakley, Pindell, Smith

NO: Barden

Mayor Royce D. Pindell declared the motion passed 6 to 1.

#### 4. The Town of Bennett's Three-Mile Plan

##### Resolution No. 901-22 – A Resolution Adopting an Updated Three-Mile Plan for the Town of Bennett, Colorado

Steve Hebert, Planning and Economic Development Manager, reported to the Board of Trustees, the Town has received three petitions for annexation into the Town. Before the Board of Trustees considers these annexations, the Municipal Annexation Act of 1965 requires the Town have in place a three-mile plan. The reference to "three miles" relates to the requirement in the Municipal Annexation Act that no annexation may extend the Town's boundary more than three miles in any direction in any one year.

The State of Colorado Department of Local Affairs (DOLA) describes a three-mile plan as:

*"a long range planning opportunity for municipalities to consider where they want to annex, how they will provide service in the newly annexed areas, and how they will sustain adequate levels of service throughout the rest of the municipality. It ensures that the municipality will annex land only when it is consistent with pre-existing plans for the surrounding area. The statute requires a three-mile plan to generally describe the proposed location, character and extent of future public utilities and infrastructure (e.g., streets, bridges, parks, playgrounds, aviation fields, waterways, open spaces and other public grounds) as well as proposed land uses for the area."*

DOLA's complete overview of the three-mile plan concept is attached.

The Town of Bennett has enacted, adopted and approved various land use, planning and transportation documents over the last several years. Each of these planning documents give the Board of Trustees guidance on how the town might grow and how new development, if any, can be served. Specifically, those plans are:

1. 2021 Comprehensive Plan
2. 2019 Capital Asset Inventory Master Plan
3. 2019 Parks, Trails and Open Space Master Plan
4. 2019 Arts and Cultural Master Plan
5. 2011 Regional Trail Plan
6. 2010 Downtown Planning Study
7. 2013 Planning and Environmental Linkages Report

TRUSTEE SUS MOVED, TRUSTEE SMITH SECONDED to approve Resolution No. 901-22 – A resolution adopting an updated three-mile plan for the Town of Bennett, Colorado. The voting was as follows:

YES: Vittum, Barden, Harrell, Oakley, Pindell, Smith, Sus

NO: None  
Mayor Royce D. Pindell declared the motion passed unanimously.

5. **Mundell Property (Bennett North) Annexation – Substantial Compliance Resolution and Setting a Public Hearing**

**Resolution No. 900-22 – A Resolution Finding Substantial Compliance for an Annexation Petition Filed with the Town of Bennett, Colorado Known as the Bennett North Annexation to the Town of Bennett, and Setting a Public Hearing**

Steve Hebert, Planning and Economic Development Manager, report to the Board of Trustees, the Town has received a petition for annexation from MGV Investments, LLC acting on behalf of multiple owners of the property known as the Mundell property, at the southwest corner of East 38<sup>th</sup> Avenue and 1<sup>st</sup> Street/Converse Road (see the attached annexation map). The request is for annexation of 153.62 acres that currently lie within unincorporated Adams County.

Under state statute, the annexation process involves several steps including:

- **Step 1:** Make a determination as to whether the petition for annexation is in substantial compliance with State law and set a public hearing on the annexation.
- **Step 2:** Notice of the hearing on the proposed annexation is published in the newspaper for four consecutive weeks and mailed to the County, School District and special districts.
- **Step 3:** The Town prepares or directs the applicant to prepare an annexation impact report.
- **Step 4:** The Town Board holds a public hearing on the annexation at which it will decide whether the property is eligible for annexation, whether or not to approve the annexation, and approve zoning for the property.
- **Step 5:** The Town Board acts on an Annexation Agreement between the Town and property owner.

This petition for annexation is at the first step in the process. The action requested tonight is for the Board to find the annexation petition to be in substantial compliance with state law and to set a public hearing on the proposed annexation. By this action, the Board is not deciding whether the property is eligible for annexation or whether to approve the annexation, but rather that the application is in substantial compliance with the statute.

State statute sets forth the process for an annexation petition and requires the petition contain the following:

- An allegation that it is desirable and necessary that such area be annexed to the municipality.
- An allegation that the requirements of Sections 31-12-104 and 31-12-105 exist or have been met.
- An allegation that the signers of the petition comprise more than fifty percent of the landowners in the area and own more than fifty percent of the area proposed to be annexed, excluding public streets and alleys and any land owned by the annexing municipality.
- A request that the annexing municipality approve the annexation of the area proposed to be annexed.

TRUSTEE OAKLEY MOVED, TRUSTEE VITTUM SECONDED to approve Resolution No. 900-22 – A resolution finding substantial compliance for an annexation petition filed with the Town of Bennett, Colorado known as the Bennett North Annexation to the Town of Bennett, and setting a public hearing. The voting was as follows:

YES: Barden, Harrell, Oakley, Pindell, Smith, Sus, Vittum  
NO: None

Mayor Royce D. Pindell declared the motion passed unanimously.

Mayor Royce D. Pindell called for a recess at 8:15 p.m. The meeting resumed at 8:20 p.m.

**6. Request for Proposal (RFP) 21-015 – Waste Reclamation & Resource Recovery Facility (WRRF) Expansion Project**

Daymon Johnson, Capital Projects Director, reported to the Board of Trustees, the Town issued the initial request for proposal (RFP) for the WRRF Expansion work as RFP 21-011 on Monday, August 23, 2021. This RFP was eventually canceled, in part because of the lack of ability for contractors to create an apples-to-apples budget comparison. Upon canceling this RFP, the Town contracted with Dave Takeda at MSK Engineering to help draft an updated RFP that would assist in the creation of a clear scope of services and provide a fair bid comparison.

The result of a series of meetings to determine the depth and breadth of the scope was RFP 21-015, which was issued on Monday, November 29, 2021, for the Design and Engineering Services of the Waste Reclamation & Resource Recovery Facility Expansion project. All who attended the pre-bid job walk for the initial RFP were directly solicited and it was also posted on the Town’s website. This bid solicitation was open for three (4) weeks and proposals were due on Wednesday, December 21, 2021. The Town received three qualifying bids for the engineering services scope of work as outlined in the attached RFP. The bidders were:

Bidding Firm	Bid
JVA Consulting Engineers, Inc.	\$761,200
Aqua Engineering	\$748,920
KLJ Engineering, LLC	\$448,589

Upon receipt of the bids, Staff completed initial reviews of each proposal and had several meetings to discuss our preliminary scoring, and what the style and questions of the interview process would be. The team of reviewers included Daymon Johnson, Dave Takeda (MSK Engineers) Will Raatz (W2 Engineers), Dan Giroux (Town Engineer), Ricky Martinez and Robin Price.

Interviews of all firms were conducted on Tuesday, January 11, 2022. Each firm was given an opportunity to pitch their ideas, and we then followed with a question and answers-based interview process.

Ultimately, the selection came down to JVA & Aqua Engineering. During their interviews, our team asked some very thoughtful, thorough and critically direct questions. We feel that we gained a firm understanding of their plan to deliver this engineering scope in a timely and efficient manner, how their interactions and experience could help with Colorado Department

of Public Health & Environment (CDPHE) and how their background would allow them to leverage their previous design work in order to ensure a thorough, well-planned design.

Staff unanimously identified Aqua Engineers to be the recommended designer of this facility expansion. There were myriad factors for this, but familiarity with our systems and the proven results and overall management of the original plant design were some of the major benefits for the town. Additionally, their reuse experience and understanding of pending CDPHE changes were also critical. Overall, Staff felt the best choice was to proceed with Aqua Engineers & Bob Frachetti's team.

A \$350,000 appropriation was carried forward from 2021. The remaining expense of \$398,920 will need to be expended from the waste water capital fund balance which will result in a future budget amendment should the waste water fund's total expenditures exceed the 2022 appropriation.

TRUSTEE BARDEN MOVED, MAYOR PRO TEM HARRELL SECONDED to authorize the Mayor and the Town of Bennett to enter into a standard Town contract agreement with Aqua Engineers in an amount not to exceed \$748,920 for engineering services to complete the design of the Water Reclamation & Resource Recovery Facility expansion. The voting was as follows:

YES: Harrell, Oakley, Pindell, Smith, Sus, Vittum, Barden

NO: None

Mayor Royce D. Pindell declared the motion passed unanimously.

## 7. Fees for Legal Services

Melinda Culley, Town Attorney, reported to the Board of Trustees, Kelly PC Municipal Lawyers, have very much enjoyed serving as Town Attorney to the Town of Bennett for the last eighteen years. While cost-effective service to the Town is a primary goal of our firm, we must also consider the ongoing increases in our own costs of doing business. Based upon the firm's general review of its fees, services, and costs, we find it necessary to increase our fees to the Town effective January 1, 2022. We last increased our rates on January 1, 2019.

Attached is a copy of our fee schedule, which reflects a \$10/hour rate increase effective January 1, 2022. This hourly increase reflects a rate that is less than the rate of inflation since the last time our fees were increased (see attached CPI-U for 2019, 2020, and estimated 2021 inflation figures). If acceptable to the Town, the revised Exhibit A to our contract should be approved by the Board of Trustees.

We have appreciated the opportunity to serve the Town of Bennett for so many years, and look forward to continuing our services in 2022. We will, of course, continue to work with the Town to identify and implement methods for managing legal work and fees.

- Attorney time – Principals \$215.00 per hour
- Attorney time – Senior Associates \$205.00 per hour
- Attorney time – Associates \$190.00 per hour
- Paralegals/Law Clerks \$ 95.00 per hour

Expenses:

- Copying \$0.15 per page Mileage Current IRS reimbursement rate Postage/Delivery at cost
- Travel Time: Travel will be billed one-way

TRUSTEE SUS MOVED, TRUSTEE SMITH SECONDED to authorize the Mayor and the Town of Bennett to enter into a standard Town contract agreement with Kelly PC Municipal Lawyers reflecting a \$10/hour rate increase for identifying and implementing methods for managing legal work and fees effective January 1, 2022. The voting was as follows:

YES: Oakley, Pindell, Smith, Sus, Vittum, Barden, Harrell  
NO: None

Mayor Royce D. Pindell declared the motion passed unanimously.

## **6. TOWN ADMINISTRATOR REPORT**

Trish Stiles, Town Administrator, reported on the following:

- Staff organized a virtual Engage, Shape, Build regarding the Master Transportation Plan (MTP) on January 19, 2022. Staff is encouraging the public, Staff, and Trustees to provide comments and feedback on the MTP. \$2 million has been requested from CDOT for the Exit 304 bridge design. There would be a Memorandum of Understanding entered into not an IGA.
- Staff is awaiting a response from CDOT to perform a crosswalk study to refresh the crossing at Hwy 79 and Centennial.
- Sub-regional projects from TIP will be in late May, 2022 – June, 2022.
- Staff is in the process of revising the Dynamic Engine Braking ordinance in order to meet CDOT's guidelines for the signage. Staff will present the revised ordinance to the Trustees during the first meeting in March.
- Ms. Stiles asked the Trustees of a good date in February for a board retreat. After a small discussion the board retreat will take place on February 25, 2022.

## **7. TRUSTEE COMMENTS AND COMMITTEE REPORTS**

### **Whitney Oakley**

Trustee Oakley reported on the following:

- Asked Staff to provide a link to Smartsheet for the Town Administrator's yearly review.

### **Royce D. Pindell**

Mayor Royce D. Pindell reported on the following:

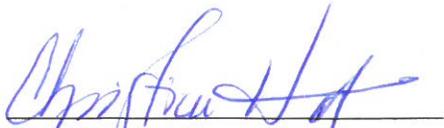
- Thanked Staff for all of their hard work.

## **8. ADJOURNMENT**

TRUSTEE VITNUM MOVED, MAYOR PRO TEM HARRELL SECONDED to adjourn the meeting. The meeting was adjourned at 9:35 p.m. Voting was as follows:

YES: Pindell, Smith, Sus, Vittum, Barden, Harrell, Oakley  
NO: None

Mayor Pro Tem Harrell declared the motion carried by unanimous vote.

  
Christina Hart, Town Clerk

  
Royce D. Pindell, Mayor

